

REMARKS

Claims 40-68 remain in the present application. Applicants respectfully request further examination and reconsideration of the rejections based on the arguments set forth below.

Election With Traverse Between Species 1, 2, 3 and 4

In the Office Action mailed July 20, 2009 for the above-captioned patent application, the Examiner stated that the present Application contains four distinct species. As such, the Examiner has required Applicants to elect a single species for prosecution on the merits.

Applicants elect Claims 40-68, drawn to Species 1, for prosecution on the merits and traverse the restriction requirement with regard to Species 1, 2, 3 and 4 for the following reasons.

Applicants respectfully direct the Examiner to 37 C.F.R. §1.146 which states that:

In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable.

The restriction requirement presented in the Office Action mailed July 20, 2009 is the *second* action on the instant application containing Claims 40-68.

Accordingly, Applicants respectfully submit that the restriction requirement

presented in the Office Action mailed July 20, 2009 is improper, and therefore should be withdrawn, since it was not presented in the *first* action as required by 37 C.F.R. §1.146.

Additionally, Applicants respectfully direct the Examiner to MPEP §803 which sets forth the "two criteria for a proper restriction requirement":

- (A) The inventions must be independent or distinct as claimed; and
- (B) There would be a serious burden on the examiner if restriction is not required.

As acknowledged by page 3 of the rejection, Claims 40-68 are all generic and therefore do not recite limitations directed to any of Species 1, 2, 3, or 4 as set forth in the restriction requirement presented in the Office Action mailed July 20, 2009. As such, although page 4 of the rejection states that "[t]he species require a different field of search," Applicants respectfully submit that the Examiner is not required to search in multiple fields (e.g., corresponding to each of the species) since Claims 40-68 do not recite limitations directed to any of the species. Thus, Applicants respectfully submit that there is not a "serious burden on the Examiner if the restriction is not required," and therefore, Applicants respectfully submit that the restriction requirement presented in the Office Action mailed July 20, 2009 should be withdrawn since it is improper.

CONCLUSION

Applicants respectfully submit that Claims 40-68 are in condition for allowance and Applicant earnestly solicits such action from the Examiner.

The Examiner is urged to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Please charge any additional fees or apply any credits to our PTO deposit account number: 50-4160.

Respectfully submitted,

MURABITO, HAO & BARNES LLP

Dated: 8 / 20 / 2009

/BMF/

Bryan M. Failing
Registration No. 57,974

Two North Market Street
Third Floor
San Jose, CA 95113
(408) 938-9060